

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITAL ONE, NATIONAL ASSOCIATION,

Plaintiff,

-against-

**NOTICE OF MOTION TO
DISMISS**

201 W 134 ST LLC, GERALD MIGDOL a/k/a JERRY
MIGDOL, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, and “JOHN AND/OR
JANE DOE #1” to “JOHN AND/OR JANE DOE #5”
inclusive, the last five named persons being unknown to
plaintiff, the persons and parties intended being the tenants,
occupants, persons, entities, or corporations, if any, having
or claiming upon the premises at 201 West 134th Street
a/k/a 2280 Adam Clayton Powell Jr. Boulevard, New York
New York, a four-story, single dwelling building, as more
fully described in the complaint,

12 Civ. 5025 (JMF)
ECF Case

Defendants.

PLEASE TAKE NOTICE that, upon the annexed affidavit of Defendant Gerald Migdol sworn to on August 2, 2012, the affirmation of Defendants’ counsel, Aaron Migdol, Esq., affirmed on August 2, 2012, and upon the accompanying Memorandum of Law in support of this motion dated August 2, 2012, and the pleadings herein, Defendants 201 W 134 ST LLC and Gerald Migdol will move this Court, before the Honorable Judge Jesse M. Furman, United States District Judge, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, Courtroom 26A, New York, New York 10007, on August 29, at 9:30 a.m. or as soon thereafter as counsel can be heard, for an order: (i) dismissing the Verified Complaint and this action with prejudice as to Defendants 201 W 134 ST LLC and Gerald Migdol in the above referenced action pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(5) of the Federal Rules of Civil

Procedure due to lack of subject matter jurisdiction, lack of personal jurisdiction as a result of improper service of the summons and complaint upon Defendant Gerald Migdol, and also due to the fact that Plaintiff lacks standing and because hearing this action in Federal Court instead of New York State Court will result in an inequitable administration of laws; and (ii) for such other and further relief as the Court deems just and proper. Defendants 201 W 134 ST LLC and Gerald Migdol respectfully request that oral argument be heard on this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
August 2, 2012

Respectfully submitted,

s/

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*Attorney for Defendants 201 W 134 ST LLC and
Gerald Migdol*